IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4171 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO. LTD.

Versus

PRAFULCHANDRA D PARMAR F/O LATE MANISHBHAI PRAFULCHANDRA

Appearance:

MR PV NANAVATI for Appellant

MR MEHUL S SHAH for Respondents No. 1-3

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Heard the learned counsel for the respective parties. Appeal admitted. Mr. M.S. Shah appears for respondent nos.1 to 3 who are original claimants and

waives service of notice in the appeal.

2. On a joint request of learned counsel, this appeal is taken up for hearing today.

3. This is an appeal under section 173 of the Motor Vehicles Act, 1988 at the instance of the Insurance Company challenging the judgement and award passed by the Motor Accident Claims Tribunal, Bhuj, in Motor Accident Claim Petition No.538/1998, being an award passed under section 163-A of the said Act.

4. As mentioned above, the Insurance Company challenges in the present appeal the award passed by the Tribunal under section 163-A of the Act. The principal contention raised in the present appeal is that where a claim for compensation has been preferred by the claimants under section 166 of the Act, a further claim under section 163-A of the Act would not lie and is not maintainable.

5. We are obliged to accept this contention of the appellant Insurance Company in view of the Supreme Court decision in the case of Oriental Insurance Company Limited Vs. Hansrajbhai Kodala, reported in JT 2001(4) page 477. Learned counsel for the respondents-original claimants does not in any manner contest this view.

6. In the premises aforesaid, the impugned judgement and award under section 163-A is required to be quashed and set aside. It is so held and directed.

7. It is clarified that the original claimants are at liberty to pursue the original claim petition under section 166 of the Act.

8. However, it is pointed out to us that the Insurance Company had already made a deposit of Rs.50000/- in respect of which the Tribunal has already passed orders as to investment and disbursement.

9. In view of the consensus between the learned counsel for the parties, we do not make any order as to liquidating the investmentsmade or providing for refund of the amount actually disbursed. However, in order to secure this amount, in equity, it is directed that the present respondent nos.1, 2 and 3 i.e. original claimants shall file an undertaking before the Tribunal within four weeks from today that the amount which the appellant Insurance Company had deposited, and which is the subject matter of the order of disbursement and

investment passed by the Tribunal, shall be subject to adjustment according to law against the final award that may be passed by the Tribunal under section 168 of the said Act.

10. This appeal is accordingly allowed with no order as to costs. Decree accordingly.

11. The Tribunal is directed to take up the hearing of the main claim petition under section 166 of the Act and to dispose of the same as expeditiously as possible.

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